

# EXHIBIT A

**ATTENTION:****Current and Past Washington State Insureds with ASD of Moda Health Plan  
A SETTLEMENT AGREEMENT MAY AFFECT YOUR RIGHTS.***A Court authorized this notice. This is not a solicitation from a lawyer.*

- A.M., a child diagnosed with Autism Spectrum Disorder (“ASD”), sued Moda Health Plan, Inc. (“Moda”) over its exclusion of Applied Behavior Analysis therapy to treat ASD in a case known as *A.M. v. Moda Health Plan, Inc.*, No. 2:14-cv-1191 TSZ, in Federal District Court in the Western District of Washington.
- A.M. and his parents have reached a settlement agreement under which Moda will: (1) provide coverage for ABA therapy to treat ASD in Moda’s Washington state health plans, and (2) pay \$250,000.00, a portion of which will be used to reimburse Class Members for unpaid ABA therapy services incurred in the past. You may have the right to file a claim if you paid out of pocket for ABA therapy while you were a Moda insured in Washington between April 1, 2012, and October 1, 2014. A claim form with instructions is enclosed.
- The Court involved in the case has granted preliminary approval of the Settlement Agreement.

**Legal Rights of Class Members**

<b>You may comment on the proposed Settlement Agreement.</b>	<b>If you are a Class Member, then you have the right to comment on, object to or support the proposed Agreement.</b> The Court will decide whether to approve or reject the proposed Settlement Agreement after a Final Hearing on _____, 2015 at __, United States District Court for the Western District of Washington, 700 Stewart Street, Seattle, WA 98101. You may submit written comments or objections you wish to be considered by the Court in the manner as described by Frequently Asked Question No. 6, below, by _____. You should not call the Court.
<b>You may make a claim.</b>	<b>If you are a Class Member, you may submit a claim</b> if you paid for ABA therapy to treat ASD from April 1, 2012, to October 1, 2014. Claims must be submitted by _____. A claim form is included with this notice.
<b>You may do nothing.</b>	<b>You do not need to take any action to receive coverage for medically necessary Applied Behavior Analysis therapy as described in the Agreement.</b> If you do nothing, any claims you have against Moda that could have been brought in the lawsuit will be forever released.
<b>You may ask to be excluded.</b>	<b>If you are a Class Member, you may opt out of the class.</b> If you opt out, you will be prohibited from filing a claim and obtaining reimbursement. You will keep the right to file a separate lawsuit. <b>You do not need to opt out if you are not a member of the Class.</b>

**FREQUENTLY ASKED QUESTIONS****1. Why did I get this notice?**

This notice concerns the proposed settlement of *A.M. v. Moda Health Plan, Inc.*, No. 2:14-cv-1191 TSZ. You are receiving this notice because you or a member of your family has, or had in the past, Moda health insurance issued in the State of Washington and a claim was submitted to Moda using the “299” diagnostic code for Autism Spectrum Disorder. **You are not a Class Member simply because you got this notice.** Only individuals covered by a Washington State insured health plan issued by Moda on or after April 1, 2012 who have received, require or are expected to require ABA therapy to treat ASD are “Class Members.” A complete definition of the class may be found at [www.sylaw.com/ModaSettlement](http://www.sylaw.com/ModaSettlement).

## 2. What is a class action, and who is involved?

In a class action lawsuit, individuals or entities called “Class Representatives” sue individuals or entities on behalf of themselves and others who may have a similar claim. In this type of lawsuit, one Court makes decisions on behalf of everyone in the class. If you or your dependent received, require or are expected to require Applied Behavior Analysis therapy to treat ASD, then you might be a Class Member.

## 3. What is this lawsuit about?

In the lawsuit, the Class Representatives claim that Moda illegally excluded and/or limited coverage of medically necessary ABA therapies to treat ASD. They allege that these exclusions and limitations violated their health plans and the State and/or Federal Mental Health Parity Acts. Moda denies all of the allegations.

## 4. What does the proposed Settlement Agreement provide?

The main points of the Agreement are described below. The entire proposed Agreement is available at [www.sylaw.com/ModaSettlement](http://www.sylaw.com/ModaSettlement). The Court must finally approve the Agreement before it is effective.

### ♦ Coverage of Applied Behavioral Analysis Therapy

Moda will cover medically necessary Applied Behavioral Analysis therapy to treat autism spectrum disorders as a Mental Health Service and consistent with “Authorization Criteria” in *Appendix A* to the Settlement Agreement (also located at [www.sylaw.com/ModaSettlement](http://www.sylaw.com/ModaSettlement)). Moda will not impose age exclusions or treatment limitations on coverage of ABA therapy. Moda will not deny or limit coverage of ABA therapy based on an “academic” or “educational” exclusion. All requests for ABA therapy must meet other standard requirements, such as the requirement that care be medically necessary.

### ♦ \$250,000 Settlement Fund

The Agreement provides for a \$250,000 Settlement Fund to reimburse Class Members for unpaid Applied Behavior Analysis therapy to treat ASD from April 1, 2012, to October 1, 2014, plus attorneys’ fees and costs, claims administration costs and incentive awards.

### ♦ Claims Process for Unpaid ABA Therapy Services

A Class Member (through his or her parents and/or legal guardian) will be eligible for payment from the Settlement Fund upon submission of a claim form (which is provided, with instructions, as part of this class notice) that contains the following four items:

1. the member’s diagnosis, who made the diagnosis, and the date of diagnosis;
2. the date(s) of neurodevelopmental or ABA therapy treatment (month/year); and
3. the unreimbursed charges or debt incurred with that treatment.

Agreement, § 7.4.2.1 To be entitled to reimbursement, a Class Member must have a diagnosis of Autism Spectrum Disorder, (299.00, 299.10, or 299.80 in the DSM-IV-TR or DSM-V) that required treatment with ABA therapy. Agreement, §§ 1.5, 7.4. In addition, the charges must be documented with some evidence of payment(s) or obligation, such as (but not limited to) cancelled checks, credit card account statements, checking account statements, provider ledgers or signed letters from the provider or the provider’s employer documenting the amount paid or debt incurred (so long as the letter clearly connects payments/debt with service dates by at least the month/year). Agreement, § 7.4.2.2.2. A Class Member is entitled to reimbursement even if no claim was made to Moda, and/or a claim was denied by Moda, at the time the service was rendered.

A Claims Processor will review the claims to confirm that the requisite items are on the claim form. Agreement, § 7.4.3. The Claims Processor will also confirm with Moda that the Class Member was insured under a health plan covered by the Agreement at the time the services were received, and that the claimed sums are not duplicative of claims previously paid by Moda. Agreement, § 7.4.3. The Claims Processor must provide a Class

Member who submits a deficient claim form with an opportunity to cure any problems, and Class Counsel is empowered to assist the Class Member in making any claim. Agreement, §§ 7.4.3.1; 7.4.3.2.

♦ **Attorneys' Fees, Litigation Costs and the Costs of Claims Administration**

Under the proposed Agreement, Class Counsel may apply for attorneys' fees under the common fund doctrine/common benefit doctrine in an amount totaling 35% of the Settlement Amount (\$87,500), to be paid out of the Settlement Fund. Agreement, § 11.1. In addition, reimbursement will be sought from the Settlement Fund for litigation costs (sums Class Counsel paid out of pocket on behalf of the Class) and costs for claims administration. Agreement, §§ 11.2; 11.4. Class Counsel will seek approximately \$\_\_\_\_\_ in litigation costs from the Settlement Fund. Class Counsel's requests for attorneys' fees and litigation costs are subject to review, and must be approved by the Courts. Agreement, §§ 11.1; 11.2; 11.4.

You are permitted to review, object to, support or comment on Class Counsel's request for attorneys' fees and costs. On or before \_\_\_\_\_, Class Counsel will post its fee and cost application at [www.sylaw.com/ModaSettlement](http://www.sylaw.com/ModaSettlement). Alternatively, you may write or email Class Counsel and request that a copy of the application be sent to you.

♦ **Incentive Award**

An incentive award of up to \$10,000 for the named plaintiff, A.M. will be requested from the Settlement Fund. Agreement, § 11.3. The Court must approve the incentive award. Agreement, § 11.3.

You are permitted to review, object to, support or comment on the request for incentive award. On or before \_\_\_\_\_, Class Counsel will post the application for incentive award on [www.sylaw.com/ModaSettlement](http://www.sylaw.com/ModaSettlement). You may also write or email Class Counsel to request a copy.

♦ **Insufficient Funds, Termination if Funds Do Not Meet Threshold, and Excess Funds**

Class Counsel expects, but does not guarantee, that the \$250,000 fund will be sufficient to pay all Class Member claims at 100%, even after payment of attorneys' fees, costs, incentive awards and costs of administration. If insufficient funds remain to pay all Class Members who file valid claims at 100% after the payment of attorneys' fees, costs, incentive awards and expenses, then all Class Members will receive a *pro rata* (percentage) distribution of their approved claimed amount. Agreement, § 7.4.7.

If funds remain after the payment of claims, attorneys' fees, costs, incentive awards and costs of administration, then those funds shall be distributed by the Court to a charitable organization or organizations to assist families with a family member with ASD to access health care and health coverage. Agreement, § 7.4.6. The parties will make recommendations to the Court, which has the ultimate authority to distribute any excess funds.

♦ **Claims Release**

Class Members who have received, require, or will require, ABA therapy services to treat ASD will release Defendant Moda from any and all claims related to ABA therapy services that were or could have been brought in the lawsuit. Agreement, §§ 1.16; 3.1-3.2. If you have any claims arising out of Moda's past failure to provide ABA therapy to treat ASD, then those claims will be resolved as part of the Agreement, and your right to payment related to ABA therapy coverage will be governed exclusively by the Agreement.

## 5. When will the Settlement Fund be available?

The Court must finally approve the Agreement and, if any Class Members appeal, a final adjudication of any appeal(s) must be made before these funds are available. If you have questions, you may call Class counsel at 206-838-3210 or go to [www.sylaw.com/ModaSettlement](http://www.sylaw.com/ModaSettlement).

## 6. How can I respond to the proposed Settlement Agreement?

### ♦ You May Opt Out (Exclude Yourself or Your Dependent).

If you wish to opt out or exclude yourself or your dependent from one of the classes, then you must send in the enclosed "Opt-Out Form." It must be sent to the address below, and must be received by \_\_\_\_\_. If you choose to opt out, you must send the Opt-Out Form to:

Moda Class Opt-Out  
c/o Nickerson & Associates  
1700 7th Avenue, Suite 116, #330  
Seattle, WA 98101

If you opt out, then you will not be entitled to make a claim, or receive payment, if the proposed Agreement is approved. You will, however, retain any rights you might have to pursue individual claims against Moda regarding ABA therapy coverage. If you believe that you have such claims, you might wish to consult with your own legal counsel regarding the relevant statute of limitations. **If you are not a member of the class, then this case does not affect you and you do not need to opt out.**

### ♦ You May Comment on, Object to, or Support the Proposed Agreement.

On \_\_\_\_\_ at \_\_\_\_\_, the Court will hold a hearing to consider comments and/or objections and to approve or reject the Settlement Agreement. The hearing will be located in the courtroom of the Hon. Thomas S. Zilly at the United States District Court for the Western District of Washington, 700 Stewart Street, in Seattle.

You are not required to attend the hearing, and you are not required to be present to submit comments for consideration. All comments on the Agreement must be submitted in advance to the address listed below.

You may attend the hearing, and may choose to bring a legal representative if you wish and at your own expense. You must tell the Court you plan to come to the hearing to object to, comment on, or formally support the Settlement Agreement or the Class Representative's request for payment of attorney fees, costs, expenses or incentive awards. If you choose to submit written comments or appear at the Court hearing, your letter must be received no later than \_\_\_\_\_ and may be mailed to:

Moda Settlement Comments/Objections  
Nickerson & Associates, LLC  
1700 7th Avenue Suite 116, #330  
Seattle, WA 98101

Any comments or objections sent to this address will be filed with the Court for its review. You can also submit your written comments directly to the Court, if you wish. You must include the case name and number on any submission to the Court. The case name and number is "*A.M. v. Moda Health Plan, Inc.*, No. 2:14-cv-1191 TSZ." All communications with the Court must be in writing. Class Members should not call the Court.

### ♦ You May Do Nothing.

If you have no claim for reimbursement, then you are not required to do anything related to this lawsuit. If the Court approves the Agreement, and you are a Class Member, then your Moda insured health plan will cover medically necessary Applied Behavioral Analysis therapy services to treat Autism Spectrum Disorders.

If you have claims to submit, then you must submit a claim form, certification and documentation as described above in order to receive payment. If you do nothing, however, any claims you have against Moda regarding ABA therapy that could have been brought in this lawsuit will be released.

## 7. Where can I get more information?

For information about your rights related to the lawsuit, you may refer to the information at [www.sylaw.com/ModaSettlement](http://www.sylaw.com/ModaSettlement), or write Class Counsel:

Richard Spoonemore or Eleanor Hamburger  
SIRIANNI YOUTZ SPOONEMORE HAMBURGER  
999 Third Avenue, Suite 3650  
Seattle, WA 98104

Email: [rspoonemore@sylaw.com](mailto:rspoonemore@sylaw.com) or [ehamburger@sylaw.com](mailto:ehamburger@sylaw.com)

You may request from Class Counsel copies of any of the documents in this matter, including the Class's motion for preliminary approval of the Settlement Agreement, which details the settlement and explains in more detail the reasons why approval is being requested.

# EXHIBIT B

*A.M. v. MODA HEALTH PLAN, INC.*

**EXCLUSION FORM**

**This form is to be completed only by those individuals who are Class members but do NOT wish to remain Class Members and who do NOT want any monetary award from the Settlement Fund.**

**If you are not a class member, then you should not return this form.**

You are only a Class Member if you have received, require or are expected to require Applied Behavioral Analysis (“ABA”) therapy to treat Autism Spectrum Disorder (“ASD”) and you were or are covered under a Washington state insured health plan issued by Moda Health Plan, Inc. on or after April 1, 2012.

If you are unsure whether you are a Class Member you can call Class Counsel, Sirianni Youtz Spoonemore Hamburger at 206-223-0303.

Name: \_\_\_\_\_  
First MI Last

Address: \_\_\_\_\_  
Number and Street

\_\_\_\_\_  
City State Zip Code

Date of Birth: \_\_\_\_\_ Telephone: \_\_\_\_\_

By signing this Form, I certify that I have read the Notice to Class Members and I understand that:

1. I am a member of the *A.M. v. Moda Health Plan, Inc.* Settlement Class.
2. I am removing myself as a member of the Class.
3. I will receive no monetary award from the Settlement Fund.
4. I have a right to pursue claims on my own, with or without my own attorney.
5. I understand that if I opt out, my claims might be affected by a statute of limitations and that I have been advised to discuss the statute of limitations with an attorney.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

City and State where signed: \_\_\_\_\_

**This form must be received no later than \_\_\_\_\_ and must be mailed to:**

A.M. v. Moda Health Plan, Inc. Exclusion Form  
Nickerson & Associates, LLC  
1700 7<sup>th</sup> Ave Ste 116 #330  
Seattle, WA 98101